

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
Western Division

UNITED STATES OF AMERICA) Case No. 3:21CR009
)
 v.) Judge Walter H. Rice
)
 IZAAK KEMP,)
)
 Defendant.)

UNITED STATES' SENTENCING MEMORANDUM

The United States of America, through its attorneys, Vipal J. Patel, Acting United States Attorney, and Dominick S. Gerace, Assistant United States Attorney, hereby submits its sentencing memorandum with respect to Defendant Izaak Kemp. Based on the factors of 18 U.S.C. § 3553(a), the United States submits that a sentence of imprisonment of one year and one day is sufficient, but not greater than necessary, to achieve the objectives of sentencing.

BACKGROUND

Between July 2016 and May 2019, Kemp was employed as a contractor at the Air Force Research Laboratory (AFRL) and the U.S. Air Force National Air and Space Intelligence Center (NASIC) at Wright-Patterson Air Force Base (WPAFB) in Fairborn, Ohio. Presentence Investigation Report (PSR) ¶ 14. Kemp maintained a Top Secret security clearance as a result of his job duties at both AFRL and NASIC, and had access to classified information. *Id.* At various times during his employment, Kemp received training on the proper handling of classified documents and materials, and understood the possible adverse effects on national security that could result from the unauthorized disclosure of classified information. *Id.* ¶ 15.

On May 25, 2019, the Fairborn Police Department (FPD) executed a state search warrant

at Kemp's residence. *Id.* ¶ 18. FPD had received information that Kemp maintained a marijuana grow operation at the residence and had conducted a search of discarded trash from the residence. The trash search yielded, among other things, plant material (that later tested positive for marijuana), a digital scale, and empty "King Palm" wrappers. *Id.* ¶ 17. Upon executing the search warrant at the residence, law enforcement located a marijuana grow operation maintained by Kemp, along with over 2,500 pages of classified documents, some of which were marked at the SECRET level.¹ *Id.* ¶ 18. The documents belonged to both AFRL and NASIC and were clearly marked as being classified. *Id.* ¶ 16, 18.

Kemp removed the documents from AFRL and NASIC on occasions between January 2018 and May 2019. *Id.* ¶ 16. In a voluntary interview conducted during execution of the search warrant, he admitted to printing the classified materials and bringing them home. *Id.* Kemp was not authorized by the U.S. Air Force to remove the classified materials and retain them at his residence, and Kemp knew that he was not so authorized. *Id.* ¶¶ 16, 18.

On February 25, 2021, Kemp pleaded guilty to a one-count information charging him with the Unauthorized Removal and Retention of Classified Documents or Materials, in violation of 18 U.S.C. § 1924(a).

ARGUMENT

Based on the factors of 18 U.S.C. § 3553(a), the United States recommends that the Court sentence Kemp to one year and one day in prison. Such a sentence is sufficient, but not greater than necessary, to achieve the objectives of sentencing, including promoting respect for the law,

¹ Pursuant to Executive Order 13526 § 1.2(a), information may be classified by the United States Government at the SECRET level if the unauthorized disclosure of such information "reasonably could be expected to cause serious damage to the national security."

reflecting the seriousness of the offense, and affording adequate deterrence of similar conduct by others.

A. Nature and Circumstances of the Offense and History and Characteristics of Defendant

The nature and circumstances of the offense and the history and characteristics of Kemp warrant a significant sentence of incarceration. It is beyond dispute that Kemp committed an extremely serious crime.² As a contractor with the U.S. Air Force and the holder of a Top Secret security clearance, Kemp worked in a subject area that involved significant and highly-sensitive classified information vital to the protection of the national defense. The government entrusted Kemp with access to that classified information and he violated that trust by knowingly removing the materials from his workplace and storing them in his residence. Kemp's actions risked the disclosure of highly sensitive government programs to adversaries and an untold amount of damage to national security.

This is not a case, moreover, involving the inadvertent or careless removal of a few documents. Kemp took over 100 clearly-marked documents home consisting of 2,500 pages. And the manner in which law enforcement discovered the documents in Kemp's home provides a further aggravating circumstance. Not only did Kemp store thousands of pages of classified information in an unsecure manner, but he did this while maintaining a significant marijuana grow operation in the same location. That marijuana grow operation—and the heightened risks of robbery and other criminal activity attendant to any drug manufacturing and distribution operation—greatly increased the chances that the classified information would fall into the

² Indeed, in 2018, Congress amended Kemp's offense of conviction, 18 U.S.C. § 1924, to make it a felony offense, thereby signaling its acknowledgment of the serious nature of the prohibited conduct. *See P.L. 115-118, Title II, § 202, Jan. 19, 2018.*

wrong hands. Kemp's actions accordingly demonstrated a flippant disregard of his duties to protect classified information, as well as a disregard for the laws governing classified information and the manufacture and distribution of controlled substances.

Kemp's history and characteristics do not suggest that a sentence other than imprisonment is warranted. Unlike many defendants who appear before this Court, Kemp appears to have had a relatively stable upbringing. Aside from the instant offense and charges in Greene County, Ohio, stemming from the marijuana located in his home, Kemp has no criminal history. PSR ¶¶ 27-29. He is well-educated, having obtained a doctorate in electrical engineering from the University of Dayton. *Id.* ¶ 42. Kemp's criminal conduct, then, does not appear to be a product of environmental factors or his upbringing. He made a considered decision to break the law and store classified information in a manner that risked the unauthorized disclosure of highly-sensitive government information, which reasonably could have been expected to cause serious damage to the national security of the United States had it fallen into the wrong hands.

For the foregoing reasons, the nature and circumstances of the offense and Kemp's history and characteristics militate in favor of a sentence of imprisonment.

B. Need to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment and Afford Adequate Deterrence

A sentence of one year and one day will reflect the seriousness of the offense, promote respect for the law, provide just punishment, and afford adequate deterrence of criminal conduct. As discussed above, Kemp's conduct represented a serious risk of harm to national security, and this Court's sentence should be designed to reflect that risk. Further, Kemp's actions demonstrated a lack of respect for the laws governing his handling of classified information. A sentence of one year and one day will promote respect for those laws.

Additionally, the need for general deterrence is readily apparent in this case. In *United States v. Peppel*, 707 F.3d 627, 637 (6th Cir. 2013), the Sixth Circuit recognized that the need for general deterrence is particularly strong in so-called “white collar” cases: “Because economic and fraud-based crime are more rational, cool, and calculated than sudden crimes of passion or opportunity these crimes are prime candidates for general deterrence.” (quotation marks omitted). Here, while there may be little risk that Kemp himself will engage in a similar offense in the future, the Court should account for the general deterrence in fashioning its sentence. A significant sentence of incarceration for Kemp will serve deter other military contractors and government personnel from engaging in the same conduct. The importance of deterring such conduct, given the national security considerations at issue, cannot be overstated.

CONCLUSION

For the reasons stated above, the United States submits that a sentence of imprisonment of one year and one day is just and warranted under § 3553(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of May, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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